

Bruce G. Chapman (State Bar No. 164,258)
 bchapman@sheppardmullin.com
 Scott R. Miller (State Bar No. 112,656)
 smiller@sheppardmullin.com
 Manuel C. Nelson (State Bar No. 229,590)
 mnelson@sheppardmullin.com
 SHEPPARD MULLIN RICHTER & HAMPTON LLP
 333 South Hope Street, 43rd Floor
 Los Angeles, California 90071-1422
 Telephone: (213) 620-1780
 Facsimile: (213) 620-1398

Lee Hsu (State Bar No. 175,272)
 lhsu@sheppardmullin.com
 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 12275 El Camino Real, Suite 200
 San Diego, California 92130
 Telephone: (858) 720-8900
 Facsimile: (858) 509-3691

Attorneys for Plaintiff and Counterdefendant,
 ENOVSYs LLC

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

ENOVSYs LLC,
 Plaintiff,

v.

AT&T MOBILITY LLC, and AT&T
 MOBILITY II LLC, collectively doing
 business as AT&T Mobility,

Defendants.

Case No. 2:11-CV-05210 DDP (AGR_x)

**OPENING CLAIM
 CONSTRUCTION BRIEF OF
 PLAINTIFF ENOVSYs LLC**

Date: January 14, 2013
 Time: TBD
 Place: Hon. Dean D. Pregerson,
 Courtroom 3

AT&T MOBILITY LLC, and AT&T
 MOBILITY II LLC,

Counterclaimants,

v.

ENOVSYs LLC,

Counterdefendant.

Table of Contents

		<u>Page(s)</u>
1		
2		
3	I. INTRODUCTION	1
4	II. THE PRIOR NEXTEL LITIGATION	1
5	III. CONSTRUCTION OF IDENTIFIED TERMS	2
6	A. Group 1 Terms: mobile remote; mobile remote unit; mobile	
7	remote receiving unit	3
8	B. Group 2 Term: to establish	4
9	C. Group 3 Term: at the network.....	5
10	D. Group 4 Terms: pre-authorized; preauthorized; preauthorizing.....	6
11	E. Group 5 Term: continuously tracked	8
12	F. Group 6 Terms: network resource(s); communication resources	9
13	G. Group 7 Terms: location information disclosure	
14	instruction; location disclosure instruction;	
15	location disclosure information.....	11
16	H. Group 8 Terms: profile; location access field.....	12
17	I. Group 9 Terms: a communication system comprising: ...	
18	within the system	14
19	J. Group 10 Terms: means for detecting an absence of	
20	communication with the remote receiving unit	14
21	K. Group 11 Terms: source of the request; source of request	17
22	L. Group 12 Terms: Claim 12 in its entirety	17
23	M. Group 13 Terms: Claim 19 in its entirety	18
24	N. Group 14 Terms: (from claim 25) “the mobile remote	
25	unit able to deny ... during a period time [sic] when access	
26	to mobile remote unit location information has been granted	
27	to another preauthorized communication resource at the	
28	network” and (from claim 28) “the system able to use	
	the location access field ... while allowing another	
	preauthorized resource identified in a second profile	
	to access the location information of the first	
	communication resource during the time that access	
	is being denied ...”	19
	O. Group 15 Term: authorized resource	21
	P. Group 16 Terms: requesting that the location information	
	of said mobile remote unit be established.....	21

1	Q. Group 17 Term: time stamp.....	22
2	IV. CONCLUSION	23
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page(s)

Cases

<i>AllVoice Computing PLC v. Nuance Commc'ns, Inc.</i> 504 F.3d 1236 (Fed. Cir. 2007)	14, 15, 16
<i>CardioFocus, Inc. v. Cardiogenesis Corp.</i> 827 F. Supp. 2d 36 (D. Mass. 2011).....	10, 20, 21
<i>Comaper Corp. v. Antec, Inc.</i> 596 F.3d 1343 (Fed. Cir. 2010)	5, 10, 12
<i>Cybor Corp. v. FAS Techs.</i> 138 F.3d 1448 (Fed. Cir. 1998)	2
<i>Enovsys LLC v. Nextel Commc'ns, Inc., et al.</i> Case No. 2:06-CV-05306 RSWL (SHx) (C.D. Cal.), D.I. 261	<i>passim</i>
<i>Enovsys LLC v. Nextel Commc'ns, Inc.</i> 614 F.3d 1333 (Fed. Cir. 2010)	2
<i>Karlin Tech. Inc. v. Surgical Dynamics, Inc.</i> 177 F.3d 968 (Fed. Cir. 1999)	3
<i>Markman v. Westview Instruments, Inc.</i> 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996)	2
<i>NTP, Inc. v. Research in Motion, Ltd.</i> 418 F.3d 1282 (Fed. Cir. 2005)	9, 20, 21
<i>Phillips v. AWH Corp.</i> 415 F.3d 1303 (Fed. Cir. 2005) (en banc)	5, 6, 10, 19
<i>Verizon Calif. Inc. v. Katz Tech. Licensing</i> 326 F. Supp. 2d 1060 (C.D. Cal. 2003).....	2
<i>WMS Gaming, Inc. v. Int'l Game Tech.</i> 184 F.3d 1339 (Fed. Cir. 1999)	14, 16

Statutes

35 U.S.C. § 112, ¶ 6.....	14
---------------------------	----

Pursuant to the Court's Scheduling Order (D.I. 34), Plaintiff Enovsys LLC ("Enovsys") hereby submits its opening brief in support of its proposed constructions of claim terms identified by the parties as needing construction.

I. BACKGROUND

Enovsys has asserted two related patents against the defendants (collectively "AT&T"), U.S. Patent Nos. 6,560,461 ("the '461 patent") and 7,925,273 ("the '273 patent").¹ The patents are directed to communications systems and methods that use location based services ("LBS"). LBS make use of information about the location of a portable device such as a cell phone to provide services related to the location information, such as tracking or navigation, or the identification and locations of nearby stores, weather forecasts for the area, etc. The asserted claims of the '461 patent relate to selective disclosure of location information, *e.g.*, by permitting a requestor to obtain or share the location of a mobile device (or the user of the device), while denying another requestor access to the location information. The asserted claim of the '273 patent relates to a method of using time information to determine whether to establish or update a device's location information in a communication system.

II. THE PRIOR NEXTEL LITIGATION

The '461 patent, the primary patent involved in this case, was previously litigated in *Enovsys LLC v. Nextel Commc'ns, Inc., et al.*, Case No. 2:06-CV-05306 RSWL (SHx) (C.D. Cal.). In the *Nextel* case, Judge Lew construed the claims of the '461 patent,² a jury verdict of infringement and no invalidity was entered,³ and

¹ Copies of the '461 and '273 patents are provided as Exhibits 1 and 2, respectively, to the Declaration of Manuel Nelson ("Nelson Decl.").

² *Enovsys LLC v. Nextel Commc'ns, Inc., et al.*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 (C. D. Cal. Feb. 26, 2008), Nelson Decl. Ex. 3.

³ *Enovsys LLC v. Nextel Commc'ns, Inc., et al.*, No. 2:06-CV-05306 RSWL (SHx), D.I. 376 (C. D. Cal. May 16, 2008), Nelson Decl. Ex. 4.

1 the infringement judgment was affirmed on appeal.⁴

2 Not only were Judge Lew's claim construction rulings in the *Nextel* case
3 correct, as discussed below, but those ruling should be treated as *stare decisis*.

4 [W]hereas issue preclusion could not be asserted against
5 new and independent infringement defendants even
6 within a given jurisdiction, *treating interpretive issues as*
7 *purely legal will promote* (though it will not guarantee)
8 *intrajurisdictional certainty through the application of*
9 *stare decisis* on those questions not yet subject to
10 interjurisdictional uniformity under the authority of the
11 single appeals court.

12 *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 391, 116 S.Ct. 1384, 1396,
13 134 L.Ed.2d 577 (1996) (emphasis added). Claim construction is purely a matter of
14 law, *Cybor Corp. v. FAS Techs.*, 138 F.3d 1448, 1454-55 (Fed. Cir. 1998) (en
15 banc), and thus entitled to *stare decisis*. Even in instances when intrajurisdictional
16 *stare decisis* does not apply, courts consider prior claim construction decisions from
17 a different jurisdiction to be persuasive and highly relevant. *See Verizon Calif. Inc.*
18 *v. Katz Tech. Licensing*, 326 F. Supp. 2d 1060, 1069 (C.D. Cal. 2003).

19 **III. CONSTRUCTION OF IDENTIFIED TERMS**

20 Enovsys has asserted claims 1, 6, 10, 11, 12, 13, 18, 19, 25, 27, and 28 of the
21 '461 patent, and claim 1 of the '273 patent. Many of the claims share various
22 terms. As a result, the parties have agreed to group various terms into 17 groups of
23 related terms. *See* D.I. 50. Enovsys's briefing follows those groupings.

24
25
26
27
28

⁴ *Enovsys LLC v. Nextel Commc'ns, Inc.*, 614 F.3d 1333 (Fed. Cir. 2010).

A. Group 1 Terms: mobile remote; mobile remote unit; mobile remote receiving unit

“Mobile remote” and “mobile remote unit” were previously construed to mean “a small, portable device used to send or receive communication transmissions from a remote location.” *Enovsys LLC v. Nextel Commc’ns, Inc., et al.*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 at 8-9 (C. D. Cal. Feb. 26, 2008) (“*Nextel*”). Similarly, “mobile remote receiving unit” was construed to mean “a small, portable device that is used to receive communication transmissions from a remote location.” *Id.*

The prior claim construction is correct and should be applied in this case. The ’461 patent generally describes mobile remotes as small portable devices: “portable mobile telecommunication devices such as cellular telephones, pagers and other handheld information receiving devices are utilized by a greater cross section of the population since they are relatively inexpensive to acquire.”⁵ Likewise, the mobile remote is generally described as communicating from a remote location: “Normally information from a communication source is transmitted to a subscriber in possession of a handheld communication information receiving device at a remote global location.”⁶

The prior *Nextel* claim construction ruling also gives effect to the additional word “receiving” recited in “mobile remote *receiving* unit.” Giving meaning to the word “receiving” adheres to a basic claim construction principle that “different words or phrases used in separate claims are presumed to indicate that the claims have different meanings and scope.” *Karlin Tech. Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968, 971-72 (Fed. Cir. 1999).

⁵ ’461 patent, 1:16-20.

⁶ ’461 patent, 1:20-23.

1 The prior claim construction ruling in *Nextel* is fully supported by the '461
 2 patent and the principles of claim construction, and should be adopted. "Mobile
 3 remote" and "mobile remote unit" should be construed to mean "a small, portable
 4 device used to send or receive communication transmissions from a remote
 5 location." "Mobile remote receiving unit" should be construed to mean "a small,
 6 portable device that is used to receive communication transmissions from a remote
 7 location."

8 **B. Group 2 Term: to establish**

9 The term "to establish" was construed to mean "to bring about; bring into
 10 existence." *Nextel*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 at 9. This
 11 construction is consistent with the written description of the '461 patent and the
 12 ordinary meaning of "establish."

13 Specifically, the '461 patent claims use the term "establish" in its ordinary
 14 sense. For example, claim 1 recites "a mobile remote unit able to communicate
 15 with at least a signal transmitting and receiving unit *to establish* mobile remote unit
 16 location information at the network..."⁷ As used in the claim, "to establish"
 17 connotes to bring into existence.

18 The '461 patent's written description also uses "establish" in this same,
 19 ordinary sense:

20 If the CPU [108] *establishes* that the current global position of
 21 the remote receiving unit is not within the user's preferred location to
 22 receive pages, the user is immediately alerted that they are out of their
 23 paging area and no paging messages will be received. ... The remote
 24 receiving unit will scan for the strongest network communicating
 25 channel via transceiver[101]. If such a link *is established*, the remote
 26

27 _____
 28 ⁷ '461 patent, 9:53-56 (emphasis added).

1 receiving unit will automatically update the network with its current
2 global positioning coordinates.”⁸

3 In circumstances such as this, where a claim term is used in its normal
4 everyday sense, it is appropriate to look to dictionaries for the meaning of the term.
5 *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1322 (Fed. Cir. 2005) (en banc)
6 (“Dictionaries ... are often useful to assist in understanding the commonly
7 understood meaning of words”); *Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343,
8 1348 (Fed. Cir. 2010) (when specification does not suggest particular meaning, “it
9 is appropriate to consult a general dictionary definition of the word for guidance”).
10 The dictionary meaning of “to establish” is “to bring about”⁹ and “to bring into
11 existence.”¹⁰

12 The term “to establish” should be construed as it was in *Nextel*, according to
13 its common meaning. “[T]o establish” means “to bring about; bring into existence.”

14 **C. Group 3 Term: at the network**

15 The term “at the network” was not construed in the *Nextel* case.

16 The ordinary meaning of “network” connotes an “interconnected group or
17 system.”¹¹ The more technical meaning is similar: “a collection of resources used
18 to establish and switch communication paths between terminals”¹² or “an
19 arrangement of nodes and interconnecting branches.”¹³ In the context of the ’461
20 patent, the network relates to telecommunication devices.¹⁴ As such, the meaning
21

22 ⁸ ’461 patent, 8:38-54 (emphasis added).

23 ⁹ Nelson Decl. Ex. 8, at 195.

24 ¹⁰ Nelson Decl. Ex. 7, at 182.

25 ¹¹ Nelson Decl. Exs. 7 (at 186); 8 (at 203).

26 ¹² Nelson Decl. Ex. 9, at 209.

27 ¹³ Nelson Decl. Ex. 11, at 226.

28 ¹⁴ ’461 patent, 1:12-18.

1 of “network” used in the ’461 patent is “a group or collection of interconnected
2 telecommunication devices or resources.”

3 The ordinary meaning of “at” is “in.”¹⁵ Putting the ordinary meaning of “at”
4 and “network” together, “at the network” means “in a group or collection of
5 interconnected telecommunication devices or resources.”

6 The ordinary meaning of “at the network” is, moreover, fully consistent with
7 the ’461 patent’s specification. Figure 1 of the ’461 patent, for example, broadly
8 illustrates a preferred embodiment of a “network” comprising satellites 2, base
9 stations 4, control stations 6, mobile remote units 8, and transmitters 10.¹⁶ The
10 Summary of the Invention also broadly describes the “network” as “a network of
11 signal transmitting and receiving units and remote receiving units.”¹⁷

12 The use of the term “at the network” in the ’461 patent fully comports with
13 the ordinary meaning of the terms “at” and “network.” Enovsys’s construction thus
14 “most naturally aligns with the patent’s description of the invention.” *Phillips*, 415
15 F.3d at 1315-16 (quoting *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d
16 1243, 1250 (Fed. Cir. 1998). “At the network” should be construed to mean “in a
17 group or collection of interconnected telecommunication devices or resources”.

18 **D. Group 4 Terms: pre-authorized; preauthorized; preauthorizing**

19 “[P]re-authorized” and “preauthorized” (and by analogy, “preauthorizing”)
20 were previously construed in the *Nextel* case to mean “authorized [or authorizing]
21 to submit a request in advance of determining whether the request will be granted.”
22 *Nextel*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 at 9-10.

23 This prior claim construction corresponds to both the ordinary meaning and
24 the description in the ’461 patent. The prefix “pre-” designates the temporal

25 _____
26 ¹⁵ Nelson Decl. Ex. 10, at 213; *see also id.* Exs. 7 (at 180); 8 (at 192).

27 ¹⁶ ’461 patent, 2:57-67.

28 ¹⁷ ’461 patent, 1:33-36.

1 relationship “before in time,” “earlier (than),” “prior (to),” etc.¹⁸ Thus, consistent
 2 with the prior claim construction, the ordinary meaning of “pre-authorized” is
 3 “authorized in advance.”

4 “Preauthorizing,” as used in the ’461 patent, is akin to obtaining a security
 5 clearance. Even when a person has a security clearance (*i.e.*, the person is
 6 “authorized in advance” to access sensitive information), that alone is not sufficient
 7 to be given actual access to all sensitive information. A person with security
 8 clearance must request the sensitive information and have a need to know the
 9 information. For example, in claim 1, there is “a pool of signal transmitting and
 10 receiving units from the network some of which are pre-authorized to be able to
 11 access the location of the mobile remote unit”¹⁹ But even for the “pool of
 12 preauthorized signal transmitting and receiving units,” “the system is able to accept
 13 or deny the provision of mobile remote unit location information”²⁰ Thus, even
 14 though a signal transmitting and receiving unit in the pool is preauthorized, that
 15 alone is not sufficient to be given access to the sensitive information, *i.e.*, the
 16 location information.

17 The prosecution history of the ’461 patent before the U.S. Patent and
 18 Trademark Office (“PTO”) similarly describes that “a pre-authorized network
 19 resource from the pool could be inhibited for a time while other pre-authorized
 20 network resources from the same pool will continue to access and obtain the
 21 location information of the mobile remote unit from the network.”²¹ Thus, a

22 ¹⁸ Nelson Decl. Ex. 10, at 217; *see also id.* Exs. 7 (at 187); 8 (at 204).

23 ¹⁹ ’461 patent, 9:56-59.

24 ²⁰ ’461 patent, 9:61-64.

25 ²¹ Nelson Decl., Ex. 6 at 120 (ENOVSY.ATT-00000788); *see also id.*, at
 26 122 (ENOVSY.ATT-00000790) (inhibition information for pre-authorized source
 27 of request used to selectively limit access to location information); *id.*, at 123
 28 (ENOVSY.ATT00000791) (preauthorized requestor has associated therewith
 mobile remote location disclosure information for the requestor which permits
 selective blocking of preauthorized requestor).

1 resource may be denied location information even though it is pre-authorized to
2 request it.

3 In light of the '461 patent, the prosecution history and ordinary meaning,
4 "preauthorized" allows a unit or resource to submit a request for location
5 information even though the request for location information ultimately may be
6 denied. Thus, the terms "pre-authorized," "preauthorized" and "preauthorizing"
7 should be construed to mean "authorized (or authorizing) to submit a request in
8 advance of determining whether the request will be granted."

9 **E. Group 5 Term: continuously tracked**

10 "Continuously tracked" was previously construed to mean "kept track of (i.e.
11 observed or known about) without interruption." *Nextel*, No. 2:06-CV-05306
12 RSWL (SHx), D.I. 261 at 10-11. The prior construction is completely consistent
13 with the term's ordinary meaning and use in the '461 patent, as well as the
14 prosecution history in the PTO.

15 The '461 patent describes preferred embodiments that keep track of the
16 location of the mobile unit at all times by periodically resolving the position of the
17 mobile remote and updating the network with the location information:

18 ... The remote receiving unit [8], will periodically resolve a
19 global position from signals transmitted from satellites and earth based
20 communication means. The resolved global position will be
21 periodically utilized to update the network This will enable the
22 paging network to know the exact global location of a remote
23 receiving unit whenever the need arises.²²

24 By periodically resolving and storing or updating the location of the mobile remote
25 unit, the location of the mobile remote unit is continuously kept track of (*i.e.*
26 observed or known about) without interruption.

27 _____
28 ²² '461 patent, 3:7-15; *see also id.*, 3:43-49; 3:58-4:2; 8:33-54; 8:65-9:4.

1 Claims 1 and 6 of the '461 patent each have "wherein" clauses reciting
 2 "continuously tracked." These wherein clauses were added to application claims 1
 3 and 3 (which issued as claims 1 and 6) during prosecution.²³ At the time of the
 4 amendment, the patentee described the difference between the amended claims and
 5 the prior art as follows:

6 The fundamental difference between the invention and the prior
 7 art is the way in which the invention limits a preauthorized network
 8 resources [sic] from accessing the location of a mobile remote unit.

9 The prior art stops to provide the location of the mobile remote unit to
 10 the network and the invention does not. In the invention the location of
 11 the mobile is *continuously* provided to the system or *tracked* during the
 12 time when a preauthorized network resource is being denied access.²⁴

13 This discussion is consistent with the '461 patent's written description and the prior
 14 construction in *Nextel* of "continuously tracked."

15 The prior *Nextel* claim construction accurately reflects the meaning of
 16 "continuously tracked" as used in the '461 patent. "Continuously tracked" should
 17 be construed to mean "kept track of (*i.e.* observed or known about) without
 18 interruption."

19 **F. Group 6 Terms: network resource(s); communication resources**

20 The terms "network resource(s)" and "communication resources" have not
 21 been previously construed. Enovsys's proposed construction, however, is
 22 straightforward. "Resource" as used in both terms should be given its ordinary
 23 dictionary meaning, *i.e.*, "means of doing something." "Network" should be given
 24 the same construction "network" was given above when construing "at the
 25 network." See *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1293 (Fed.

26 ²³ Nelson Decl. Ex. 6, at 72, 136, 164-165 (ENOVSY.ATT-00000642, 820,
 27 848-849).

28 ²⁴ Nelson Decl. Ex. 6, at 142 (ENOVSY.ATT-00000826) (emphasis added).

1 Cir. 2005) (similar terms should be interpreted similarly); *CardioFocus, Inc. v.*
 2 *Cardiogenesis Corp.*, 827 F. Supp. 2d 36, 40 (D. Mass. 2011) (same). And
 3 “communication” is so clear it needs no construction.

4 The term “resource” is not given any special definition in the specification of
 5 the ’461 patent and is found only in the claims. It is thus appropriate to turn to the
 6 dictionary for guidance. *See Phillips*, 415 F.3d at 1322 (“Dictionaries ... are often
 7 useful to assist in understanding the commonly understood meaning of words”);
 8 *Comaper*, 596 F.3d at 1348 (when specification does not suggest particular
 9 meaning, “it is appropriate to consult a general dictionary definition of the word for
 10 guidance”). In this regard, the ordinary meaning of “resource” is “a means of doing
 11 something; expedient”²⁵ or “a means of accomplishing something.”²⁶ Even in a
 12 more specialized dictionary for Electrical and Electronics Engineering, “resource”
 13 is similarly defined as:

14 A means utilized to perform one or more operations, or to
 15 accomplish a given task. In computers, for instance, resources include
 16 storage device, processors, and applications.²⁷

17 There is nothing in the ’461 patent or its prosecution history that gives
 18 “resource(s)” a meaning that is narrower than its ordinary meaning, *i.e.*, “a means
 19 of doing something.”

20 Thus, resource(s) should be accorded its ordinary meaning of “means of
 21 doing something”; “network” was construed above to mean “a group or collection
 22 of interconnected telecommunication devices or resources”; and “communication”
 23 does not require further construction.

24
 25 _____
 26 ²⁵ Nelson Decl. Ex. 12, at 232.

27 ²⁶ Nelson Decl. Ex. 10, at 219.

28 ²⁷ Nelson Decl. Ex. 13, at 240.

**G. Group 7 Terms: location information disclosure instruction;
location disclosure instruction; location disclosure information**

Previously, “location information disclosure instruction” was construed to mean “information specifying or instructing whether the location information can or should be disclosed.” *Nextel*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 at 11. Although not previously construed, the nearly identical terms “location disclosure instruction” and “location disclosure information” all represent minor variations of the previously construed “location information disclosure instruction.” The minor variations all should be construed similarly.

The prior claim construction is fully consistent with the ordinary meaning of these terms and with the ’461 patent’s written description. For example, in claim 11, the method “quer[ies] at the network for *location information disclosure instruction* for the mobile remote receiving unit” and then it “us[es] said instruction (v) to allow or block mobile remote receiving unit location information to the pre-authorized source of request.”²⁸ Thus, even if the source of the request is authorized to request or access location information, there is an additional check which seeks a location information disclosure instruction “for” (*i.e.*, associated with) the mobile remote and applies that instruction to allow or block the location information of the mobile remote unit to the preauthorized source of the request.

The written description of the ’461 patent also similarly describes that “[t]he remote unit may either accept or decline to this [sic] request by transmitting specific information [*i.e.*, location disclosure information] back to the paging network which will reveal or block the location to the caller.”²⁹ Again, even if a resource is authorized to access the location information, the resource may not be given the information. Instead, the remote unit must provide a location disclosure instruction or information to grant or block the location information to the resource.

²⁸ ’461 patent, 11:10-15.

²⁹ ’461 patent, 5:42-45.

“Location information disclosure instruction,” “location disclosure instruction” and “location disclosure information” should be construed to mean “information specifying or instructing whether the location information can or should be disclosed,” as in the prior *Nextel* case.

H. Group 8 Terms: profile; location access field

“Profile” was previously construed to mean “a set or collection of information, attributes, or parameters relating to a particular person, device, application, or subject.” *Nextel*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261 at 11. The related term “location access field” was construed to mean “a field, element or item of data in a profile that indicates, or contains information indicating, whether access to location information can or should be allowed.” *Id.* at 11-12.

The prior constructions are fully consistent with the plain meaning of the terms and their use in claim 28 of the ’461 patent, where these terms are found. As recited in claim 28, “a profile is maintained by the system, said profile containing the identity of a preauthorized resource, identity of the first communication resource and a location access field indicating whether said preauthorized resource identified in the profile should be allowed/disallowed to access the location information of the first communication resource identified in said profile.”³⁰ Thus, the term “profile” plainly includes a collection of information relating to communication resources.

The ’461 patent explains that, in a preferred embodiment, “pre-selected areas, pager ID, paging protocol and other relevant information of the remote receiving unit are stored in the data library of a paging control station [6] for all pagers utilizing the paging network.”³¹ This passage provides an example confirming that a “profile” is a collection of information. Such a “profile” can store

³⁰ ’461 patent, 14:10-18.

³¹ ’461 patent, 3:3-6.

1 “relevant information of the remote receiving units.”³² The ’461 patent further
 2 explains that, in a preferred embodiment, after receiving a request for location
 3 information, “the control station ... verifies from its data library if the positioning
 4 disclosure feature for that remote receiving unit has not been blocked by the
 5 subscriber.”³³ This preferred embodiment describes a profile in the data library that
 6 stores location disclosure information, among other things. The use of “profile” in
 7 the ’461 patent is consistent with its ordinary meaning.³⁴ Thus, the construction of
 8 “profile” in the *Nextel* case as “a set or collection of information, attributes, or
 9 parameters relating to a particular person, device, application, or subject” is correct.

10 The meaning of “location access field” is provided directly by claim 28 as “a
 11 field in the profile that indicates whether a preauthorized resource identified in the
 12 profile should be allowed/disallowed to access location information of a
 13 communication resource.” One preferred embodiment of the claimed “location
 14 access field” is the location “disclosure feature” stored in a profile as discussed
 15 above.³⁵ The prosecution history described, among other things, a preferred
 16 embodiment that uses stored “inhibition information” to selectively limit access of
 17 preauthorized sources of requests.³⁶ These examples are completely consistent with
 18 the Court’s prior construction of “location access field.” Additionally, the ordinary
 19 meaning of “field” includes “an element of a database record in which one piece of
 20 information is stored”³⁷ which also is consistent with Court’s prior construction of
 21 “location access field.”

22 ³² ’461 patent, 3:4-5.

23 ³³ ’461 patent, 4:46-51.

24 ³⁴ Nelson Decl., Ex. 7, at 188 (“4: a set of data ... portraying the significant
 25 features of something”).

26 ³⁵ ’461 patent, 4:46-51.

27 ³⁶ Nelson Decl., Ex. 6, at 122 (ENOVSY.S.ATT-00000790).

28 ³⁷ Nelson Decl., Ex. 8, at 196; *see also* Exs. 9 (at 208); 11 (at 225).

1 “Profile” should be construed to mean “a set or collection of information,
 2 attributes, or parameters relating to a particular person, device, application, or
 3 subject,” as construed in *Nextel*. “Location access field” should be construed as “a
 4 field, element or item of data in a profile that indicates, or contains information
 5 indicating, whether access to location information can or should be allowed,” as
 6 construed in *Nextel*.

7 **I. Group 9 Terms: a communication system comprising: ... within**
 8 **the system**

9 For reasons that it will likely explain at some point, AT&T asserts that “[a]
 10 communication system comprising: ... preauthorizing some of the communication
 11 resources to be able to obtain the location of the mobile remote unit at a given time
 12 wherein the location of the mobile is continuously tracked within the system” is
 13 indefinite. D.I. 50 at 5. However, both parties have offered constructions for the
 14 key terms within this phrase – “preauthorizing,” “communication resources,”
 15 “mobile remote unit” and “continuously tracked.” The remaining terms do not
 16 appear to need any construction.

17 **J. Group 10 Terms: means for detecting an absence of**
 18 **communication with the remote receiving unit**

19 The parties agree that the term “means for detecting an absence of
 20 communication with the remote receiving unit” is a “means-plus-function”
 21 limitation governed by 35 U.S.C. § 112, ¶ 6. To construe a means-plus-function
 22 limitation, the Court must, first, identify the recited function and, second, identify
 23 the corresponding “means,” *i.e.*, the structure described in the specification that
 24 performs the recited function. *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d
 25 1339, 1347 (Fed. Cir. 1999); *AllVoice Computing PLC v. Nuance Commc'ns, Inc.*,
 26 504 F.3d 1236, 1240 (Fed. Cir. 2007).

27 The parties further agree that the recited function is “detecting an absence of
 28 communication with the remote receiving unit,” but disagree as to the structure that

1 performs such function. AT&T suggests that it cannot find a structure described in
 2 the '461 patent to perform the recited function, and that therefore claim 10 is
 3 indefinite. Enovsys identifies the structure as a CPU implementing the decision
 4 block of the flow chart provided in Figure 4.

5 In this regard, the '461 patent provides a detailed drawing and description of
 6 a remote receiving unit.³⁸ The '461 patent explains that all of the blocks and
 7 functionalities of the mobile remote are controlled by the CPU 108.³⁹ As described
 8 above in the "continuously tracked" limitation (Group 5), stored location
 9 information for the mobile remote unit can be periodically updated. The '461
 10 patent describes how, in certain embodiments, an update may be performed:

11 The remote receiving unit will scan for the strongest network
 12 communicating channel via transceiver [101]. If such a link is
 13 established, the remote receiving unit will automatically update the
 14 network with its current global positioning coordinates. In
 15 circumstances where the remote receiving unit does not find a suitable
 16 network channel for direct communication, the remote receiving unit
 17 will alert the user that no RF communicating channel was found for
 18 automatic update of its current global position.⁴⁰

19
 20
 21 ³⁸ '461 patent, Fig. 2; 6:46-8:24.

22 ³⁹ '461 patent, 6:48-52 (CPU controls connection circuitry); 6:58-62 (CPU
 23 controls satellite receiving means 103 and terrestrial receiving means 104); 6:62-7:5
 24 (CPU controls operation of satellite receiving means 103); 7:10-11 (CPU controls
 25 satellite unit via 206); 7:13-14 (CPU controls decoder 105); 7:14-35, 43-45
 26 (transmission and priority of data from satellite decoder 105 and terrestrial signal
 27 decoder 106 determined by CPU); 7:45-49 (CPU controls operation of connecting
 28 circuitry, and satellite and terrestrial receiving means); 7:49-51 (CPU determines
 when satellite or terrestrial signal is received and processed); 7:52-65 (CPU
 processes stored data); 7:66-8:10 (CPU controls power usage, and determines
 which signals to block, pass and process); 7:11-24 (CPU alerts user and processes
 and stores messages).

⁴⁰ '461 patent, 8:50-59.

1 The patent explains that “the actions undertaken by the remote receiving unit during
 2 this process[] are best illustrated in ... Fig. 4.”⁴¹ Figure 4 provides a flow chart,
 3 which includes a process or command box stating “Search For Strongest Network
 4 Communication” leading to a decision diamond box with the question
 5 “Comm[unication] Channel Found?”⁴² Figure 4 is a flow chart representing the
 6 algorithm performed by the CPU 108 to search for the strongest network
 7 communicate channel and to decide whether a communication channel is present or
 8 absent.⁴³ This algorithm implemented by CPU 108 thus performs the function of
 9 “detecting an absence of communication with the remote receiving unit.”

10 “In a means-plus-function claim in which the disclosed structure is a
 11 computer, or microprocessor, programmed to carry out an algorithm, the disclosed
 12 structure is not the general purpose computer, but rather the special purpose
 13 computer programmed to perform the disclosed algorithm.” *WMS Gaming*, 184 at
 14 1349. In such instances, the patentee can provide adequate structure by describing
 15 the algorithm implemented by the CPU to perform the function in any manner
 16 understandable to one of ordinary skill in the art, including via a flowchart. *See*
 17 *AllVoice Computing*, 504 F.3d at 1245 (flowchart sufficient description of
 18 algorithm implemented by processor). Here, the structure associated with the
 19 function of “detecting an absence of communication with the remote receiving unit”
 20 should be construed as “a CPU executing the decision block ‘Comm. Channel
 21 Found?’ in the algorithm illustrated in Figure 4,” or equivalents thereto.

22
 23
 24
 25 ⁴¹ *Id.*, 9:4-6.

26 ⁴² *See also* ’461 patent, 9:23-29 (further describing relevant portion of Fig. 4
 flow chart).

27 ⁴³ *See also* ’461 patent, 7:49-51 (CPU determines when satellite or terrestrial
 28 signal is received and processed).

K. Group 11 Terms: source of the request; source of request

The terms “source of the request” and “source of request” were not previously construed. This is undoubtedly because those terms are readily understandable and do not require construction. AT&T’s proposed construction uses the word “originator” instead of “source.” Since a common definition of “origin” is “source”⁴⁴ – the same word used in the claims – changing “source” to “originator” as AT&T proposes adds nothing. These words do not need any construction.

L. Group 12 Terms: Claim 12 in its entirety

AT&T initially asserted that claim 12 was indefinite.⁴⁵ AT&T has apparently dropped that assertion, but now asserts that “[c]laim 12 does not require anything more than [c]laim 11 requires.” *See* D.I. 50, at 6. Other than the constructions of terms discussed above, AT&T has not provided any construction of terms from claim 12, and should not be permitted to do so at this late date.

Claims 11 and 12 differ in scope on their face. There is no requirement that the “querying at the network for location information disclosure instruction for the mobile remote receiving unit” recited in claim 11 include “transmitting the identification of the source of request to the mobile remote receiving unit and obtaining information disclosure instruction from the mobile remote receiving unit” as recited in claim 12. Claim 11 encompasses various ways to accomplish “querying at the network for location information disclosure instruction for the mobile remote receiving unit.” For example, the “querying at the network for location information disclosure instruction” could be accomplished by a control station querying various resources, including a data bank or library, for the location disclosure instruction. The data bank or library may or may not provide the required

⁴⁴ Nelson Decl., Ex. 12, at 228.

⁴⁵ Nelson Decl., Ex. 5 at 68.

1 location information disclosure instruction for the mobile remote receiving unit.
 2 Claim 12 covers instances when the control station performs the “querying” by
 3 transmitting to the mobile remote unit the identification of the source of the request,
 4 and obtaining the information disclosure instruction from the mobile unit. Thus
 5 claims 11 and 12 plainly do not have the same scope.

6 Terms in claim 12 construed elsewhere should be given the same meaning.
 7 No other construction has been proposed by either party and none should be given.

8 **M. Group 13 Terms: Claim 19 in its entirety**

9 Like it did for claim 12, AT&T initially asserted that claim 19 was
 10 indefinite.⁴⁶ AT&T now asserts that “[c]laim 19 does not require anything more
 11 than [c]laim 18 requires.” *See* D.I. 50, at 7. Once again, AT&T has not provided
 12 any construction of any term from claim 19 that is not already construed above, and
 13 should not be permitted to do so at this late date.

14 Claim 19 recites

15 The method of claim 18 wherein the step of exposing the
 16 location disclosure information (iii) may also include forwarding the
 17 specified location disclosure information to a second communication
 18 node at the network.

19 There is no requirement that the “exposing the location disclosure information ... at
 20 the network” recited in claim 18 must include “forwarding the specified location
 21 disclosure information to a second communication node at the network” as recited
 22 in claim 19. For example, claim 18 covers exposing (making known) location
 23 disclosure information somewhere in the network, such as control station, or a data
 24 library of a control station. Claim 19 covers communicating the location disclosure
 25 information to a second node, *e.g.*, from a mobile remote unit or first control station
 26

27 _____
 28 ⁴⁶ Nelson Decl., Ex. 5, at 69.

1 to a second control station, or from a data library to a control station. Thus, claims
2 18 and 19 have different scope.

3 Aside from terms already being construed for other claims, there is only one
4 term in claim 19 – “node” – that might benefit from construction. “Node” appears
5 in asserted claims 6 and 19, and is not used in the written description of the ’461
6 patent. Claim 6 recites “a mobile remote receiving unit located at a first network
7 node or geographic area ... [and] a control unit located at a second network node.”
8 As used in claim 6, “node” connotes a network location. This is consistent with the
9 ordinary dictionary definition of node: “In a network, the point at the end of a
10 branch.”⁴⁷ See *Phillips*, 415 F.3d at 1322 (“Dictionaries ... are often useful to assist
11 in understanding the commonly understood meaning of words”). Consistent with
12 its ordinary meaning and use in the claims, “node” should be construed to mean
13 “point at the end of a branch.”

14 **N. Group 14 Terms: (from claim 25) “the mobile remote unit able to**
15 **deny ... during a period time [sic] when access to mobile remote**
16 **unit location information has been granted to another**
17 **preauthorized communication resource at the network” and (from**
18 **claim 28) “the system able to use the location access field ... while**
19 **allowing another preauthorized resource identified in a second**
20 **profile to access the location information of the first**
21 **communication resource during the time that access is being**
22 **denied ...”**

23 The term “while” in claim 28 was previously construed to mean “although
24 also capable of.” *Nextel*, No. 2:06-CV-05306 RSWL (SHx), D.I. 261, at 7-8. It
25 should receive the same construction here. Other terms in the phrases at issue – *i.e.*
26 “mobile remote unit,” “establish,” “pre-authorized,” “preauthorized,” “resource(s),”

27 ⁴⁷ Nelson Decl., Ex. 11, at 227; see also *id.* at 226 (defining network as “an
28 arrangement of nodes and interconnecting branches”).

1 “profile,” and “location access field” – are discussed elsewhere. Apart from
 2 “while” and those other terms, the phrases from claims 25 and 28 do not require
 3 construction.

4 In *Nextel*, the Court examined claim 1 of U.S. Patent No. 5,918,159 (“the
 5 ’159 patent”).⁴⁸ The ’461 patent is a continuation in part (C-I-P) of the ’159
 6 patent.⁴⁹ Claim 1 of the ’159 patent recites “divulging to certain or all callers the
 7 global location of a callee in possession of the said call receiver whi[l]e blocking
 8 such information from being divulged to certain or all other callers.”⁵⁰ The Court
 9 noted that, outside the context of the claims, “while” can connote two concepts: (1)
 10 “at the same time” or (2) “although” or “whereas.” *Nextel*, No. 2:06-CV-05306
 11 RSWL (SHx), D.I. 261, at 7-8. The Court observed that, for claim 1, “while” could
 12 not mean “at the same time,” as that would cause the impossibility of divulging to
 13 all callers location information while at the same time blocking such information
 14 from certain or all callers (or divulging location information to certain or all callers
 15 while blocking such information to all callers). *Nextel*, No. 2:06-CV-05306 RSWL
 16 (SHx), D.I. 261, at 8. Thus, the term “while” as used in claim 1 of the ’159 patent
 17 had to satisfy the “although” or “whereas” concepts, which the Court articulated as
 18 meaning “although also capable of.” *Nextel*, No. 2:06-CV-05306 RSWL (SHx),
 19 D.I. 261, at 8.

20 This rationale is equally applicable here. “[W]hile” as used in claim 28 of
 21 the ’461 patent must mean “although also capable of.” See *Nextel*, No. 2:06-CV-
 22 05306 RSWL (SHx), D.I. 261, at 7-8; *see also NTP*, 418 F.3d at 1293 (“Because
 23 [the] patents all derive from the same parent application and share many common
 24

25 ⁴⁸ A copy of the ’159 patent is provided at Ex. 14 of Nelson Decl.

26 ⁴⁹ ’461 patent, related U.S. Application Data on cover sheet; 1:5-9.

27 ⁵⁰ The Court in *Nextel* noted that “white” was a typographical error and that
 28 “while” was the correct spelling of the term. *Nextel*, No. 2:06-CV-05306 RSWL
 (SHx), D.I. 261 at 7.

terms, we must interpret the claims consistently across all the patents”); *CardioFocus*, 827 F. Supp. 2d at 40 (similar terms used consistently to be construed uniformly in both patents with common ancestry).

O. Group 15 Term: authorized resource

The term “authorized resource” appears in claim 1 of the ’273 patent. The ’273 patent was not involved in the *Nextel* case.

Except for the “pre,” “authorized” in claim 1 of the ’273 patent is the same term as “preauthorized” in the ’461 patent, *i.e.*, “authorized to submit a request in advance of determining whether the request will be granted.” Similarly, “resource” in claim 1 of the ’273 patent is the same term as in the ’461 patent, *i.e.* “means of doing something.”

The ’273 patent is a continuation of the ’461 patent and both patents share the same figures and written descriptions.⁵¹ As a result, the explanations above regarding the term “pre-authorized” recited in the claims of the ’461 patent apply equally to “authorized” recited in claim 1 of the ’273 patent. *See NTP*, 418 F.3d at 1293 (common terms in patents with common ancestry should be interpreted consistently); *CardioFocus*, 827 F. Supp. 2d at 40 (similar terms used consistently to be construed uniformly in both patents with common ancestry). The same is true with regard to the term “resource.”

“Authorized” should therefore be construed to mean “authorized to submit a request in advance of determining whether the request will be granted.”

“Resource” should be construed to mean “a means of doing something.”

P. Group 16 Terms: requesting that the location information of said mobile remote unit be established

The terms “mobile remote unit” and “established” were construed above in connection with the ’461 patent, and should be given the same meaning in the ’273

⁵¹ Nelson Decl, Ex. 2 (related application data on cover sheet and 1:7-14).

1 patent. *See NTP*, 418 F.3d at 1293; *CardioFocus*, 827 F. Supp. 2d at 40. No other
 2 term in this limitation requires construction. “Mobile remote unit” should be
 3 construed to mean “a small, portable device used to send or receive communication
 4 transmissions from a remote location.” Similarly, “established” should be
 5 construed to mean “brought about; brought into existence.”

6 **Q. Group 17 Term: time stamp**

7 The term “time stamp” in claim 1 of the ’273 patent should be construed to
 8 mean “recorded information indicating the time an event has occurred.”

9 “Time stamp” is not used in the written description of the ’273 patent. The
 10 ’273 patent does, however, describe using time information to determine the
 11 relative recency of location information:

12 The paging control station [6] validates the current active area of
 13 the remote receiving unit with the pre-selected areas to receive pages.

14 If the current active area of the remote receiving unit is valid and
 15 within a pre-defined time interval the message is transmitted to the
 16 remote receiving unit. ... In instances where the current active area of
 17 the remote receiving unit is valid but the remote receiving unit has not
 18 updated the network with its current position over a pre-defined time
 19 period, ... a request will be placed for the remote receiving unit to
 20 update its current active global position.⁵²

21 If the location information is sufficiently recent, it may be used by the system. If
 22 the location information is too old or stale, an update of the location information is
 23 sought.

24 In claim 1, “time stamp” also describes the relative recency of location
 25 information:

26
 27 _____
 28 ⁵² ’273 patent, 3:41-54 (emphasis added).

1 ... (e) updating said communication system with the location
2 information of said mobile remote unit;

3 wherein the determining of said step (b) further comprises:

4 (i) maintaining *a time stamp* of when the location information of
5 said mobile remote unit was last updated within said communication
6 system;

7 (ii) using said *time stamp* to verify that a predetermined time
8 interval has passed since the location information of said mobile
9 remote unit was last updated

10 Thus, a check is made to determine (verify) when the location information was last
11 provided or updated. This determination could be an absolute or relative time
12 determination (*e.g.*, five minutes ago).

13 Consistent with claim 1 and the written description of the '273 patent, "time
14 stamp" should be construed as "recorded information indicating the time an event
15 occurred."

16 IV. CONCLUSION

17 For the foregoing reasons, Enovsys respectfully requests that the Court adopt
18 its proposed constructions.

19
20 Dated: October 29, 2012

Respectfully submitted,

21
22 SHEPPARD MULLIN RICHTER
& HAMPTON LLP

23
24 By: /s/ Bruce G. Chapman
Bruce G. Chapman

25 Attorneys for Plaintiff and
26 Counterdefendants
27 ENOVSYS LLC
28